

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-18-90113

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

OCT 30 2018

**David J. Smith
Clerk**

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against _____, U.S. District Judge for
the U.S. District Court for the _____ District of _____, under the Judicial
Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.**

ORDER

_____ (“Complainant”) has filed this Complaint against United States District Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in May 2018 Complainant filed a lawsuit against two defendants raising multiple claims for relief. The next month, the defendants filed a motion to dismiss the amended complaint, generally arguing that Complainant failed to state a claim on which relief could be granted. After that, Complainant filed multiple motions seeking various types of relief. In July 2018 the defendants filed a motion to stay the case until the court had ruled on their motion to dismiss, and the Subject Judge granted the motion.

After various additional proceedings, in August 2018 Complainant filed, among other things, a “Motion for Copies of Requested Legal Representation by Defendant,” and the docket entry noted that the motion was referred to a magistrate judge. The Subject Judge issued an order denying Complainant’s Motion for Copies and other motions he had filed, finding that he had failed to comply with a local rule. Later that month, the Subject Judge issued an order granting the defendants’ motion to dismiss and dismissing the case, generally finding that Complainant failed to establish that he was entitled to relief on his claims.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “fraudulently” ruled on his August 2018 Motion for Copies, as the motion was not referred to her. He asserts that the Subject Judge is retaliating against him for filing a previous Complaint of Judicial Misconduct or Disability against her. He

also states that the Subject Judge should not have ruled on his motion because she was “under investigation for Cognizable misconduct.” He attached documents to his Complaint.

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” Id. The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions and orders in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge retaliated against him for filing a Complaint of Judicial Misconduct or Disability or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge